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ABSTRACT

This special issue of the "Indiana English Journal" focuses on the law and the teacher of English and language arts. Included in the issue are the following articles: "The High School Press and Prior Restraint" by Roy Colquitt, "What's Obscene in Indiana? The New Law, the Miller Decision, and the Teaching of English" by Peter Scholl, and "The Law and the English Teacher" by Revonda Ball. Also included are a review by Linda Gregory of "Captive Voices: High School Journalism in America" and a poem by Elmer Brooks describing teachers' encounters with copyright restrictions. (TS)

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ROY COLQUITT

THE HIGH SCHOOL PRESS AND PRIOR RESTRAINT or "Don't Stop the Presses!"

Most, if not all, public school systems have rules and regulations, written or simply "understood," governing the publishing and distributing of high school newspapers, "underground" newspapers, pamphlets, leaflets, and other printed materials. The majority of these rules require the "prior approval" of some school official before materials can be distributed on campus. In the years since the famous *Tinker* decision affirming students' full rights to freedom of expression a number of school systems have found themselves in court, charged by students with abridgment of students' freedom of the press, and with unconstitutional "prior restraint." What is prior restraint, and when do school rules abridge a student's freedom of expression and press? A closer look at court cases concerning the high school student press over the last five years will rather accurately define the boundaries of school rules concerning student generated publications, and also suggest the advisability of certain rules.

The use of "prior restraint" in regard to student publications involves either completely denying to the student the right to publish certain types of materials, or "censoring" student writings that are to be distributed to other students and staff. These actions have been held to be unconstitutional by the various courts in this country, unless certain procedures were followed. The larger part of the cases that have produced these rulings have come as a result of the *Tinker* decision in which the Supreme Court firmly established the "law" that all students enjoy the protection of the Constitution and its Amendments, including freedom of expression and the press found in the First Amendment. In *Tinker* v. *Des Moines Independent School District* (89 SCt 733, 1969), a group of students including 15-year-old John Tinker was refused permission by the school principals of Des Moines to wear black armbands to protest the hostilities in Viet Nam. Some students defied the rule and were suspended. A court fight followed. At the heart of the case was the conflict between the students' rights to express their beliefs and the school administrators' right to prohibit actions by students that the administrators believed would disrupt the educational activities of the school. After judgments, reversals, and appeals, the case reached the Supreme Court, which made the famous decision, "First Amendment rights . . . are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights at the schoolhouse gate." The Court went on to establish guidelines under which expressions of belief by students could be prohibited, ". . . conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder

or invasion of the rights of others is, of course, not immunized by the constitutional guaranty of freedom of speech." This last quotation from the Court's decision is extremely important, but is often overlooked. The emphasis of the statement is on such an action taking place *before* the ban, "conduct by the student . . . which . . . disrupts classwork or involves substantial disorder. . . ." The statement does *not* say, "Conduct which *may* disrupt etc." Then one might conclude that prohibitions or rules cannot be made restricting freedom of expression until *after* the expression has caused a disruption of the educational process. "Yes" and "No." As with most Supreme Court decisions, there is ambivalence. In another part of the decision, the Court stated that, ". . . the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities. . . ." In other words the Court would seem to be saying that, if the school officials could have reasonably forecasted disruptions, they could have prohibited the expression of free speech. It is upon this point that the use of prior restraint by school authorities is based. Does not the princpal when he "forecasts" that a particular publication might cause substantial disruption, have the right to prohibit the printing and distributing of that publication? Does he not also have the right to "censor" or delete certain words, passages, or articles from the publication if he can "forecast" material disruption? Most school boards, superintendents, and principals believe they have, and act accordingly. Whether or not they actually have these rights has been argued in a number of cases since *Tinker*. The schools have defended their right to prior restraint, i.e. prohibition and censorship, in a number of ways, and some courts have been inclined to agree under certain circumstances. Other courts have disagreed entirely that the school through its officers may exercise prior restraint in any way. That the courts are not in agreement should surprise no one.

But to back-track slightly, the magnitude of the question of official censorship of student generated publications actually surfaced one year after *Tinker* in 1970[1] with *Scoville* v. *Board of Education of Joliet Township* (425 F2d 10, 1970). In *Scoville*, two high school students were expelled after writing, off the premises, a publication which was distributed in school and which contained, among other articles, material critical of various school policies and authorities. The students sued, alleging violation of their rights under the First and Fourteenth Amendments. The U. S. Court of Appeals, 7th Circuit, in finding for the students, upheld the right of the students to distribute the publication because school officials had not presented evidence to substantiate their claim that "the action [prohibition and expulsion] was taken upon a reasonable forecast of substantial disruption of school activity" (13). In this case the school officials had attempted to prohibit a particular action at a particular time using a broad state law concerning the preservation of discipline within the school. The Court had used *Tinker* to contradict them. Most schools, however, already had regulations concerning student publications which they thought to be carefully constructed and within the parameters set by *Tinker*.

The majority of student publication rules and regulations prohibit the printing or distribution of any literature without the approval of the principal or other school administrative official. This "prior restraint" is ostensibly for the prevention of disruptions as a result of the content of any of the publications. By examining the materials before they are printed or at least before they are distributed, the school officials obviously felt that they could more accurately "forecast" if the publication were likely to cause a disturbance in the school activities. Adding weight to their argument was the famous statement by Justice Holmes that freedom of speech may allow one to cry "Fire!" in a crowded theater, but one must face the consequences of such "free" speech. It followed then that, since the school officials had a legal duty to insure the safety of the students and the continuance of the educational process without serious disruption, they had every right to the use of prior restraint over student generated publications. This argument got its first major court test in *Eisnery* v. *Stamford Board of Education* (440 F2d 803, 1971) before the U. S. Court of Appeals, 2nd Circuit.

In this case, the Stamford Board of Education had established the following policy:

> No person shall distribute any printed or written matter on the grounds of any school or any school building unless the distribution of such material shall have prior approval by the school administration.
> In granting or denying approval the following guidelines shall apply.
> No material shall be distributed which, either by its content or by the manner of the distribution itself, will interfere with the proper and orderly operation and discipline of the school, will cause violence or disorder, or will constitute an invasion of the rights of others.

The policy would seem well within the limits of Tinker's "forecast." Students at a local high school, however, wishing to publish a mimeographed newspaper of their own creation, and objecting to having to submit the material for prior approval, charged that their right to freedom of expression and the press had been violated. The U. S. Court of Appeals, 7th Circuit, upheld the complaint of the students and enjoined the Board from enforcing the policy. The Appeals Court agreed with the decision of the District Court, but disagreed with the reason for the decision. The district Court had reasoned that the policy imposed a "prior restraint" and was therefore invalid. The Appeals Court saw the situation in a different light, and based its opinion primarily on another case, *Freedman* v. *Maryland* (380 US 51), but also quoted heavily from *Tinker*. The Appeals Court did not feel that the policy constituted prior restraint, since, as reasoned earlier, the school officials had a responsibility to prevent material disruptions of educational activity. The Court went on to assume, almost simplistically, that "the Board would never contemplate the futile as well as unconstitutional suppression of matter that would create only an *im*material disturbance." Even though the lack of precision in the policy bothered the Court, rather than prior restraint, the Court chose to see the policy as a "regulation of speech" (808), with which it found no fault. Instead, the deci-

sion to uphold the lower court's ruling was centered on the lack of a definite process for approval or rejection as part of the policy. The policy was deficient in stating to whom and how material may be cleared, the time limits permitted for review, and the lack of definition of the term "distribute." Thus, the Court in effect validated prior approval if accompanied by procedural safeguards. *Eisner* became the first in a long line of interpretations of the idea of prior restraint as it applied to regulations calling for the preprinting and predistributing approval of student writings.

Later that same year, 1971, in *Quarterman* v. *Byrd* (453 F2d 54, 1971), Charles Quarterman, a tenth grade school student brought suit against the superintendent of the county school system for violating his First Amendment rights and sought an injunction preventing the enforcement of his suspension from the high school. Quarterman had been suspended for twice distributing an underground newspaper on campus without permission. This was in violation of the school's rule that prohibited any student from "distributing, while under school jurisdiction, any advertisements, pamphlets, printed material, announcements, or other paraphernalia without the express permission of the principal of the school" (55). The U. S. Court of Appeals, 4th Circuit, citing *Tinker*, *Scoville*, and *Eisner*, again supported the legality of prior approval, this time because "Free speech under the First Amendment, though available to juveniles and high school students, as well as adults, is not absolute and the extent of its application may properly take into consideration the age or maturity of those to whom it is addressed. Thus, publications may be protected when directed to adults but not when made available to minors . . ." (57). Constitutional rights then become subject to age considerations. Also, according to this Court, relying on *Tinker*, prior restraint of student publications is specifically permissible where school officials can forecast substantial disruption, et cetera. What the Court, in siding with Quarterman, did find wrong with the regulation was "the absence both of any criteria to be followed by the school authorities in determining whether to grant or deny permission, and of any procedural safeguards in the form of 'an expeditious review procedure' of the decision of school authorities" (59). Thus the Court had added the need for appeal procedures to submission of material procedures as necessary for "constitutional" prior restraint, while placing a qualification on students' constitutional rights.

A similar case in 1972, *Egner* v. *Texas City Independent School District* (338 FSupp 931, 1972), restated the point made by the Court in *Quarterman* concerning the restriction of students' First Amendment rights due to their immaturity. This court went even further in justifying prior restraint in the school environment on the basis that compulsory school attendance resulted in a captive audience and enlarged the possibility that complete student freedom of expression on this captive audience could interfere with the educational process. Later in 1972, another appeals court, in *Shanley* v. *Northeast Independent School District* (462 F2d 960, 1972), ruled that it too thought prior approval for distribution of student materials constitutional. Using the term from *Eisner*, this court decided that the rule was

really more of a "regulation of speech" than a prior restraint, "as long as the regulation for prior approval does not operate to stifle the content of any student publication in an unconstitutional manner . . ." (969), as the Court naively put it.

Two decisions in 1973 might be pointed out since they reinforce earlier decisions of the constitutionality of prior restraint of the high school student's freedom of expression and the press. *Baughman* v. *Frienmuth* (478 F2d 1345, 1973) reiterated the need for exact well-defined standards by which to approve or reject permission to the students to publish materials. It also again pointed out the need for an appeals procedure, as did also *Sullivan* v. *Houston Independent School District* (475 F2d 1071, 1973).

Then, one might reasonably assume that prior restraint of the printing and distributing of student generated materials in high school is legal and constitutional if the proper procedures are included as part of the rules. It is unfortunately not that simple, for, just as some courts have upheld reasonable prior restraint, others have completely denied its legality regardless of procedure.

In 1972, in *Fujishima* v. *Board of Education* (460 F2d 1355, 1972), a class action was brought by three high school students challenging a rule forbidding distribution of materials without the prior approval of the school superintendent (Beginning to sound familiar?). Two students had been suspended for distributing an underground newspaper known as the "Cosmic Frog;" and, another student was suspended for handing around an unsigned petition calling for "teach-ins" about the Viet Nam War. This student was later suspended again, this time for distributing leaflets about the War. The U. S. Court of Appeals, 7th Circuit, agreed with *Tinker* in that, without a demonstration of material and substantial interference with the educational process and school discipline, schools may not deny *full* (italics mine) First Amendment rights to their students. The Court went on to cite other aforementioned cases including *Quarterman* and *Eisner*, but to disagree with them. This Court believed the *Eisner* court, in interpreting the "Forecast" section of *Tinker*, to be in error when it allowed prior restraint if joined by proper procedural safeguards. Quite the contrary, the *Fujishima* court declared that

> The *Tinker* forecast rule is properly a formula for determining when the requirements of school discipline justify *punishment* of students for exercise of their First Amendment rights. It is not a basis for establishing a system of censorship and licensing designed to *prevent* the exercise of First Amendment rights (1358).

The Court did, nevertheless, defend the right of schools to establish rules for times and places of distribution of literature, but placed on the school itself the burden of telling the students these rules.

In two more recent cases in 1973, the courts again have ruled against prior restraint. In a decision extremely similar to *Fujishima*, the Court in *Vail* v. *Board of Education* (354 FSupp 592, 1973) also stated that school authorities may not absolutely ban the distribution of student newspapers, but that they may, as in *Fujishima*, set reasonable rules concerning the

times and places of distribution, and that school authorities have the responsibility for informing the students of these rules. The most recent of all these cases, however, *Jacobs* v. *Board of School Commissioners* (490 F2d 601, 1973), decided upon in December of 1973, probably contains more important keystone decisions than any case mentioned since *Tinker*.

The students of an Indianapolis high school distributed an unofficial student newspaper, "The Corn Cob Curtain," first challenged a school board regulation prohibiting the distribution of any literature which did not have the prior approval of the General Superintendent. After a district judge, citing *Fujishima*, declared that rule unconstitutional, the Board amended it to prohibit the distribution of material which is "likely to produce a significant disruption of the normal educational processes, functions or purposes in any of the Indianapolis schools, or injury to others." The Court of Appeals, 6th Circuit, also found this amended rule unconstitutional because "this rule was both vague and overbroad" (604), in defining those consequences which would make the distribution unlawful. A lengthy quotation from the Court's decision is valuable here.

> Those consequences are articulated as "a significant disruption of the normal educational processes, functions, or purposes in any of the Indianapolis schools, or injury to others." Is decorum in the lunchroom a "normal educational . . . purpose?" If an article sparks strident discussion there, is the latter a "disruption?" When does disruption become "significant?" The phrase "injury to others" is also vague. Does it include hurt feelings and impairment of reputation by derogatory criticism, short of defamation . . .? (605)

The plaintiffs also sought to have other rules concerning student publications removed. Concerning a rule that names of all persons who participated in the publication must be published, the Court decided that this rule was also unconstitutional because "without anonymity, fear of reprisal may deter peaceful discussion of controversial but important school rules and policies" (607). Yet another rule prohibited anyone, with the exception of "the school organization . . . or organizations of parents and teachers or students whose sole use of funds is for the benefit of the particular school in which they are organized," from selling merchandise, collecting money, or soliciting funds or contributions from the students for any reason. This rule fell before the Court also. The Court found this rule unconstitutional by weighing the plaintiffs' claims that they could not afford to publish their newspaper without contributions from students for the issues of the newspaper, against the defendants' claims that commercial activities are an unnecessary disruption and distraction from the function and order of the school. The Court made this decision on the judgment that the protection of the students' constitutional rights outweighed the possible small disruption that might be caused by the commercial activity.

And finally, a rule prohibiting the distribution of any literature "that is . . . obscene to minors . . .," was struck down. The Court cited a number of cases that attempted to define "obscene," and took into full account the aforementioned idea of the allowances for differences in maturity between high school students and adults. Noting a great distinction between obscene

materials and nonobscene materials that contain profanity, the Court ruled that,

> Although there is a difference in maturity and sophistication between students, at a university and at a high school, we conclude that the occasional presence of earthy words in the "Corn Cob Curtain" can not be found to be likely to cause substantial disruption of school activity or materially to impair the accomplishment of educational objectives. (610)

Thus in one case and decision, this court had ruled as unconstitutional prior restraint of publication and distribution, prohibition of sales of student publications on campus, enforced signatures on publications, and overbroad "obscenity" charges.[2] Where then does this leave the principal, the superintendent, or the school board when they attempt to control student publications in what they consider "the best interests of the community and school, and to prevent disorder and interruption of the educational process"?

It would seem that they are actually presented with two alternatives. Either they may institute rules and regulations requiring prior approval of all student generated publications, and attempt to incorporate into these rules the procedural safeguards the courts have insisted upon; or, they may decide to make no rules or regulations concerning the student press except where and when publications and other materials may be distributed. Each alternative has its good and bad points.

If the principals, superintendents, and school boards decide on the first alternative, that of establishing the rules of prior approval or the suggestion thereof, they are bound to precise statement and involved procedure such as the courts have indicated:

1. The rules must be specific in stating by whom the material is to be reviewed *(Eisner* v. *Stamford Board of Education)*.

2. The rules must state how long a period of time the reviewer may take in making a decision *(Sullivan* v. *Houston Independent School)*.

3. The ruling of the reviewer must be able to be appealed to another disinterested authority *(Sullivan* v. *Houston Independent Schools)*.

4. This appeal process must also have specific time limits set for reaching a decision *(Baughman* v. *Frienmuth)*.

5. The rules must state on *exactly* what grounds, in precise terms, the material submitted may be rejected *(Baughman* v. *Frienmuth)*.

6. The rules must state specifically at what times and at what places the materials may be distributed *(Vail* v. *Board of Education)*.

7. The rules must be written so as to be understood by those to whom they are directed *(Baughman* v. *Frienmuth)*.

8. The authorities themselves are responsible for insuring that the students are made aware of the rules and understand them *(Vail* v. *Board of Education)*.

9. The rules must not arbitrarily prohibit any conduct or distribution that is done in a peaceful and reasonably orderly manner, and which does not force anyone to accept any material that he does not want *(Vail* v. *Board of Education)*.

10. The rules must not state or *imply* any threat of disciplinary or restrictive action on the part of the school authorities in response to any materials that cannot clearly be shown to be of such libelous nature as to give cause for legal action *(Jacobs* v. *Board of School Commissioners)*.

In addition to the rules concerning prior approval, the school authorities may not (1) remove financial support from a school-sponsored publication or restrict the sales of a nonschool-publication in an attempt to keep them from being published *(Joyner* v. *Whiting)*[3]; (2) use vague "obscenity" regulations to prohibit the distribution of material *(Fujishima* v. *Board of Education);* or (3) use general "forecasts" of student disruptions of the educational process to control, suppress, or censor the student press *(Jacobs* v. *Board of School Commissioners).* That such rules and regulations might be impossible to phrase is a distinct possibility. If they could be phrased, however, the principal, superintendent, and school board would be in a good position to exert great "control" over the student publications printed and distributed at the high school.

But, if the principal, superintendent, and school board chose the second alternative, the more plausible option it would seem, fewer of these authorities might find themselves on the losing end of a court battle. The authorities could establish reasonable rules concerning places and times of distribution and stop there. Any publication that violated those rules, or caused an obvious and serious disruption of the school, or was straightforwardly and *clearly* obscene or libelous could be immediately prohibited and the students responsible punished according to the severity of the results of their distributing the materials. Most schools would find this punishment rarely if ever needed. And if needed, no court has said that a student may not be punished for a gross breach of discipline and order, or for causing a major disruption to the education process.[4] To the almost certain charges of looseness and lack of control of student publications which will be hurled at school officials by members of the community at large and by those who disagree with or are wounded by statements in the student press, those same officials must plead reason and the dictates of Democracy. The courts have rightfully decided that high school students too have full constitutional rights that must be protected. High school campuses must serve as a free arena of ideas if this country's basic constitutional beliefs are to remain secure.

In sum then, the second alternative, the avoidance of prior restraint, grantedly carries a greater "risk" with it, but, as the Supreme Court said in *Tinker,* it is a risk that educational administrators should be willing to take.

FOOTNOTES

[1]In the ten years previous to this, the courts had made only two important decisions concerning the freedom of the high school press. In *Tally* v. *California* (362 US 60, 1960), the court ruled freedom of the press extends to distribution as well as writing and printing; and, in *Zucker* v. *Panitz* (299 FSupp 102, 1969), the court had ruled that a student newspaper is "a forum for dissemination of ideas and information" and that prohibiting an advertisement against the Viet Nam War abridged the First Amendment rights of the students.

[2]The Board of School Commissioners appealed this decision to the Supreme Court which, earlier this year, ruled that the case no longer presented a controversy for it to decide since the students had graduated. The case was therefore declared moot.

[3]In *Joyner* v. *Whiting* (477 F2d 456, 1973), the president of a college removed all financial support from the campus newspaper when it expressed viewpoints contrary to those of the col-

lege concerning integrating the student body. The Court ruled that this constituted an attempt at censorship of the press, and thus was unconstitutional. See also *Antonelli* v. *Hammond*, (308 FSupp 1329, 1970).

[4]See *Schwartz* v. *Schuker* (298 FSupp 238, 1969), *Baker* v. *Downey City Board of Education* (307 FSupp 517, 1969), and *Graham* v. *Houston Independent School District* (355 FSupp 1164, 1970).

THE COPY CAT

I found in a book a lovely lyric.
I made some copies to use in class.
Said a friend to me, with a grin satiric,
"To charm our foals, must we lose our ass?"

It seems I'd committed a plain infringement
Of the current statutes of copyright.
My viscera writhed at the sheer impingement
Of the notion that I was a felon, quite!

So I turned from books to television,
And wrote on the board what I deemed a gem
From the scathing wit or wry derision
Of Maude or Rhoda or a gal like them.

I learned that, thence, under no condition,
Could I record what their tongues had loosed,
And much I grieved that, without permission,
Nary a line could be reproduced.

Oh, blithe would I spread to a world benighted
The beauty and mirth that have come my way,
But every damned thing is copyrighted,
And there's little else that a man can say.

It just might be that student bloopers
In all those themes we would fain forget
And certain ploys of party pooners
Remain uncopyrighted yet.

It just might be that wild grafitti
On bridge abutments and privy walls
Might still float free—salacious, meaty—
In shameless chalk or pencil scrawls!

But if I used these, they, too, would fail me!
I'll be (forever) put to the test:
If I copy © things, why, then they'll jail me
Or quite abhor me if I use the rest!

—Elmer Brooks

PETER A. SCHOLL

WHAT'S OBSCENE IN INDIANA? The New Law, The Miller Decision, and the Teaching of English.

Though battles fought by educators over the alleged obscenity of a film or book seldom turn upon the actual letter of the law, understanding just what the obscenity law says is a matter of vital concern to teachers of English. The burning of *Slaughterhouse-Five* and other books in Drake, North Dakota, for example, has been called the "first educational application" of the 1973 Supreme Court ruling on obscenity, the controversial *Miller* v. *California*.[1] In Drake there was not a judicial ruling on the books in question; the school board simply ordered their destruction on its own authority; yet the board members no doubt believed they were acting in accord with the law of the land. Should there have been criminal proceedings initiated against the English teacher who was using the books in his classes, moreover, the issue would have been resolved with full legal rigor.

What does the law say about obscenity in the state of Indiana? This is an issue which affects not only what a teacher may use in the classroom, but also what he may read or see as a private citizen. Ultimately, this is a matter which is decided by the legislators as they construct the laws and the courts as they interpret them and apply relevant legal and constitutional principles.

It has never been easy to determine what is legally obscene in Indiana. In fact, until very recently it was quite impossible to give a legal definition. For from August 1973 until May 1975, there was no effective criminal statute dealing with obscenity in the state. This legislative vacuum was created when the Indiana Supreme Court held the formerly applicable chapters of the Indiana Code to be unconstitutional, applying the provisions of the U. S. Supreme Court's decision in *Miller* v. *California* (1973).

Before the *Miller* decision, the Indiana Code stipulated penalties for anyone trafficking in matters that were "obscene, lewd, indecent or lascivious." This law, and it was a law similar to those in most other states at the time, was too vague in light of the following requirements set forth by the Supreme Court that: "State statutes designed to regulate obscene materials be carefully limited;" and that "state regulation of obscene materials is confined to works which depict or describe sexual conduct, which conduct must be specifically defined by the applicable state law. . . ." As amended, the Indiana Code now defines obscene depiction or description of sexual conduct to include only:

> (i) acts of actual sexual intercourse, or sodomy; or (ii) exhibition of the uncovered genitals in the context of masturbation or other actual sexual activity; or (iii) depiction of sadomasochistic abuse . . . [meaning] flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

The law pertaining to minors ("unmarried individuals under the age of eighteen") is more restrictive:

> "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with (an individual's) unclothed genitals, pubic area, buttocks or, if such individual be a female, breast.[2]

The words in parentheses are the only additions to the amended text; they replace "a person's clothed or," which four words are the only deletions, insofar as the law for minors is concerned.

Greater specificity was not the only thing needed in order to write a constitutional law. The legislators had to react to the new guidelines and emphases established in *Miller*. Before *Miller*, to be ruled obscene, (1) the dominant theme of the material taken as a whole, had to appeal to a "prurient interest" in sex; (2) the material had to be "patently offensive" because it affronted "contemporary community standards" regarding the depiction of sexual matters; and (3) the material had to be affirmatively shown to be "utterly without redeeming social value."

The new guidelines laid down by the Supreme Court as they have been written into the Indiana Code read as follows:

> Any matter or performance is obscene if: (i) the average person, applying contemporary community standards, finds that the dominant theme of the matter or performance taken as a whole, appeals to the prurient interest in sex, and (ii) the matter or performance depicts or describes in a patently offensive way, sexual conduct, and (iii) the matter or performance, taken as a whole, lacks serious literary, artistic, political or scientific value.

The difference between these and the previous guidelines laid down by the Supreme Court may appear somewhat subtle; the implications of the changes, however, are quite significant.

In a number of ways the new Indiana law seems rather "enlightened" in comparison with what it replaces. Some of the advantages will first be discussed; following will be discussion of possible weaknesses.

ADVANTAGES

1. *Specificity*. Perhaps the premier advantage of the new law is its greater specificity in detailing just what materials are prohibited. The sponsor of the Senate bill, Sen. Leslie Duvall (R-Indianapolis), said according to the AP that the statute was aimed at "getting rid of commercial smut peddlers in Indiana" and would not apply to such things as sex education in schools. Though in its early form the Duvall-sponsored measure enumerated a "less permissive" list of outlawed sexual conduct (condemning "physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion") he was speaking in the spirit of the *Miller* decision. For in *Miller*, Justice Burger insists that the Court is trying to "isolate 'hard core' pornography from expression protected by the First Amendment." Furthermore, judgments are to be made of works "taken as a

whole"—the book is not to be condemned for what happens on one page; "obscene" is to be construed with respect to *sexual* conduct; "dirty language" and the like does not meet the definition of sexual *conduct*; and prohibited works must lack "serious value" in the four named areas

2. *Defenses and exemptions from prosecution.* The old Indiana law protected only "standard medical books," teaching in medical schools, and the practice of medicine and pharmacy from prosecution. In both new Indiana laws there is a section which greatly broadens this protection:

> In any prosecution . . ., it shall be a defense that the matter was distributed or that the performance was performed for legitimate scientific or educational purposes.

Note the inclusion of "educational." This special mention was not made in the *Miller* guidelines, though as the American Bar Association has contended, the omission of educational value from the list of four categories of serious value mentioned was a serious error. The Indiana law applying to adults continues to state that:

> The following are exempt from prosecution under this chapter: schools with a full-time faculty and diversified curriculum; churches . . .; museums; . . . public libraries; governmental agencies; other organizations who are income tax exempt, are supported in part or in whole by tax funds, or receive . . . support from publicly donated funds; and persons acting in the capacity as employees or agents of any of the above.

Portions omitted include the usual exemption of health-related activities. This section appears to make a teacher not criminally liable for prosecution for matters distributed or discussed among adults when he is acting within the scope of his duties as a professional.

Elementary and high school teachers—those dealing with minors—are given a differently-worded protection. The law for minors states that "In any prosecution . . ., it shall be an affirmative defense that the matter was distributed or that the performance was performed for legitimate educational or scientific purposes." In other words, in the case of a trial a teacher could plead in his defense that he was acting in his professional capacity. He would introduce evidence to make good this claim. In order to gain a conviction, the prosecution would then bear the burden of overcoming the evidence produced by the defendant (his "affirmative defense").

According to Evansville attorneys Sydney and Charles Berger, there is no practical difference between the exemptions allowed for teachers in the law for adults and the one for minors. In a trial involving either law, the defendant would try to make good his claim that he was exempt from prosecution; and in order to convict, the State would have to prove beyond a reasonable doubt that such was not the case.

3. *Only one law.* Though according to a 1974 Supreme Court decision, *Jenkins* v. *Georgia*, juries may interpret what is offensive sexual conduct "according to local community standards"—"without specifying what community" they mean, at least the new law will, as Sen. Duvall stated, "fill the field in Indiana." In both provisions for adults and minors alike, there is a section which stipulates that these statutes are to be the only ones to be

enacted or enforced at any governmental level in the State. Therefore, whatever "local community standards" may mean to a given jury, that jury will have to come to terms with the rather specific language and limitations written into the Indiana Code.

WEAKNESSES

1. *Absence of a national standard.* Chief Justice Burger recognizes that "fundamental First Amendment limitations on the power of the states do not vary from community to community, but this does not mean that there are or should be or can be, fixed, uniform national standards of precisely what appeals to the 'prurient interest'. . . ." In other words, in *Miller* the Court has renounced an earlier majority stand in *Jacobellis* v. *Ohio* (1964) which specified that community standards were to be national and not local. The Court insists, in a sense, that while First Amendment protection is afforded equally and invariably to all the states, what is not covered (obscenity) can vary from state to state (and even from locality to locality). *Fanny Hill,* for example, may be legal according to the law in one state but illegal in another. The lack of a uniform national standard may, consequently, have a "chilling effect" on what books authors are willing to write, publishers are willing to publish, and distributors are willing to carry to a national market. Even assuming that all the states might very precisely define what pornography is by their standards (and so give "fair notice" to potential violators), these standards will vary from state to state. This variance in itself creates problems for many people and institutions.

The Court may be sidestepping its responsibility in leaving the task of defining and interpreting what is meant by obscenity up to states and local communities. Our nation may be as Justice Burger contends, "too big and too diverse" to allow the satisfactory application of a single standard. Yet is delegating the responsibility to Indiana or even the city of Indianapolis much of an improvement? How about New York State and the Borough of Manhattan?

Though indeed we have only one legal definition of sexual conduct in Indiana, interpretation of that definition is left to the jury applying whatever "community" standards it wants to apply. The problems undergone by Kanawha County, West Virginia, loom large behind this weakness in the *Miller* decision. The superintendent of schools in Kanawha County thought that the bitter conflict there was largely brought on by the "differences in educational philosophy and beliefs that are deep rooted. This county is extremely diverse and sooner or later the groups had to meet in confrontation." There is certainly no single, acceptable standard in that "community." No doubt a national standard would appear quite objectionable to some factions within that or any other region; but such a standard would at least make the problem more amenable to judicial review. In any case, the "local community standards" doctrine is not going to help in places like Kanawha County. And how many of us live in communities where there are not greatly divergent standards that are deep rooted?

2. *Who decides?* Juries in interpreting what the law covers are to apply the standard of "the average person"—a hypothetical being who may prove to be as Protean as he is immaterial. Liberals will be encouraged to note that this "average person" replaces the much earlier and much more censorious "particularly susceptible or sensitive person." The term is vague; the same charge is made against many other terms used, such as "patently offensive," "prurient interest," "serious value" (about which more follows under 3). And the danger of such vagueness, one legal writer informs us, is (1) that the vague law fails to provide adequate notice of what is prohibited; (2) statutory vagueness (according to Justice Brennan) generally causes courts to "apply a stricter standard as to the limit of permissible vagueness." This stricter enforcement can endanger First Amendment rights. (3) "The vague law leaves its enforcement to the subjective discretion of police and local courts." (4) Such vagueness may cause the courts to be "overrun with marginal cases of borderline obscenity."[3]

3. *The serious value test.* The court renounced the requirement that prosecutors must prove that a work is "utterly without redeeming social value." Justice Burger in the majority opinion in *Miller* said that this requirement "called on the prosecution to prove a negative . . . a burden virtually impossible to discharge. . . ." Obscenity, the Court has held, is not a form of "speech" protected by the First Amendment because it is essentially valueless as well as "patently offensive." Therefore, an obscene work must "lack serious literary, artistic, political, or scientific value."

How is such value to be determined? The jury decides, applying the standard of the "average person" as explained above. And the jury, the Court has made clear, needs no help from "expert" testimony "when the materials themselves are actually placed in evidence" (see *Paris Adult Theatre* v. *Slaton*, at 5-6). Thomas Tedford, chairman of the Commission on Freedom of Speech of the Speech Communication Association, interprets this to mean, "In short, sexual materials are now guilty until proved innocent!"[4]

Teachers of English may be fully convinced that the discernment of "serious value" ("good" literature, "good" art) has not yet become an exact science or even a precise art. Justice Douglas has long dissented from the prevailing opinion on these and other grounds. He holds that obscenity may well be indefinable and ultimately a matter of taste rather than fact: "What shocks me may be sustenance for my neighbor," he says. Yet the law insists that these matters be treated as questions of fact to be tried by juries who aim to please Mr. Average Person.

The intent of the five-to-four majority on the Court was to make it easier to "give prosecutors and the police more power to deter the dissemination of pornography."[5] The new law their decision has engendered in Indiana may well provide the specificity needed to obtain convictions in cases of "hard core" pornography. Yet how frequently and with what success the law will be applied remains to be seen. Prosecutors are not likely to move in their area unless they feel the groundswell of public opinion firmly behind them—and we have managed to live since August 1973 without the

"protection" of any state statute on obscenity. Have people become adjusted to the presence of triple-X theatres in their communities? Has the issue of obscenity gotten lost among the problems that crowd the headlines? Or will this new law be used as a scourge to drive the "smut peddlers" out of Indiana?

No one can answer any of these questions with much accuracy. Suffice it to say that the new law does not seem to place any novel hardships on the teacher of English. The Indiana law and the *Miller* decision which govern for the moment (no doubt the Court will rule again) have their share of weaknesses, but they pose fewer problems for the teacher than do the normal extra-legal and even illegal sanctions that often restrict his freedom in and out of the classroom.

FOOTNOTES

[1]Ken Donelson, "Some Tentative Answers to Some Questions About Censorship," *English Journal*, 63 (April 1974), 21.

[2]The new Indiana laws amend the Indiana Code 1971, 35-30, Chapters 10.1 "Obscene Matters and Performances," and Chapter 11.1 "Providing Obscene Matters and Performances Before Minors." The measures were passed as Senate Enrolled Act No. 88 and House Enrolled Act No. 1492, respectively.

[3]Beverly G. Miller, "*Miller* v. *California*: A Cold Shower for the First Amendment, *St. John's Law Review*, 48, 3 (March, 1974), 593.

[4]Thomas Tedford, "What Every Teacher Should Know About the Supreme Court Obscenity Decisions," *English Journal*, 63 (October, 1974) 21.

[5]Miller, p. 610.

A REVIEW

Captive Voices: High School Journalism in America, Robert F. Kennedy Memorial, 1974. Schocken Books, 200 Madison Ave., New York, NY 10016, $1.45.

Captive Voices has an alluring, provocative title, but a far from accurate one to describe the status of high school journalism.

The book is the result of 18 months of surveys and meetings conducted by the Commission of Inquiry into High School Journalism, funded by the Robert F. Kennedy Memorial. Cummins Engine Foundation of Columbus also awarded the commission a grant.

When the commission began work in 1973, it set out to examine (1) the degree to which direct and indirect censorship of high school journalism operated to deny student journalists the protection of the First Amendment; (2) the degree to which minority youth find access to the experience of high school journalism unavailable to them; (3) the educational and journalistic quality of secondary school journalism and whether high school journalism education helps to prepare students for later careers in the field of professional journalism; and (4) the degree to which editors and others in the established media are aware of the problems and possibilities of high school journalism.

The data on these points were collected through six formal hearings (one in South Bend) where 130 witnesses (nearly 60 per cent students) testified; through 12 meetings with groups such as the Native American high school journalists, the Missouri Scholastic Press Association Workshop, and professional journalists; through surveys of students, advisers, and managing editors of daily newspapers; and through a content analysis of 293 high school newspapers and a review of scholastic journalism research.

Captive Voices presents nine pages of summary recommendations on the issues, some of which are paraphrased here:

1. Students should know their First Amendment rights and these rights of student journalists should be observed. Nonschool sponsored media should also receive First Amendment protection.

2. Teachers and student journalists should actively recruit minority youth for school media programs.

3. The quality and general availability of journalism in the schools should be "drastically improved." Journalism teachers and advisers should be selected for their interest and ability and given sufficient time and pay for their efforts.

4. Established media can support the rights of student journalists, recruit minority youth, and offer internships, consultations, professional expertise, and financial support to young journalists.

Few students' rights advocates, trained advisers, sensitive administrators, or professional journalists would quarrel with these goals. But the list

deserves scrutiny by those charged with implementing the recommendations.

More journalism experiences—mass media for the consumer, film study, First Amendment rights, and media ethics and responsibilities—should be incorporated in the curricula of most secondary schools, but few states have adequate certification for journalism teachers. Few English teachers have the background to teach these areas. Even fewer colleges and universities offer courses or programs to train such teachers.

Although journalism department enrollments continue to soar, few college students plan journalism teaching careers; Bernstein and Woodward's Watergate expose model holds more attraction. Even if an adequate supply of qualified journalism teachers were available, the current trend of no-frill curricula and tight budgets threatens expanded secondary journalism programs.

If schools are in bad shape financially, commercial media are worse off. Internships for collegiate journalists have been drastically reduced or eliminated and permanent media jobs are scarce. While the professional press may not be able to provide financial support to minority youth journalists and high school journalism programs, the press can be supportive in other ways mentioned in the report. Professional journalists are usually willing to meet with high school classes, workshops, and conferences when their schedules permit. Such has been the case in Indiana, but maybe this state is an exceptional situation.

Students of minority groups face subtle, invisible barriers to participation in high school journalism, according to the commission. Not only do minority youth have to deal with negative attitudes from white staff members and advisers, but they also have to meet standards of performance more conducive to success by whites, i.e., "B" or better in English before admission to journalism classes or publications staffs. Because many schools schedule publications activities after school, minorities are effectively eliminated from participating if they ride buses across town or work to support their families. Furthermore, school newspapers provide poor coverage of minority news and issues, according to the commission.

This issue of minority participation is a chicken and egg one: can minority students—or any others—be effective, contributing members of scholastic publications staffs if their writing skills are poor, if the assertiveness necessary for reporting is lacking, and if their desire to meet strict publication deadlines is low? High school journalism is often an elitist operation. Few students—white or black—in the lower half of their classes make it on newspaper and yearbook staffs. Few tasks exist that slower, less skilled, or less motivated students can be trained to perform.

The commission recommendation to actively recruit minority youth for high school journalism is well taken, but it will require the continual efforts of advisers, English teachers, counselors, professional journalists, and activist minority groups to succeed. With more blacks and other minorities, including women, in visible media positions, the recruitment should be easier.

Captive Voices and the commission could have done more to facilitate the recruitment by including some success stories of minority youth, but the bulk of the report focuses on the frustration and failure of minority youth and others who consider their journalistic voices captive and censored. One cannot deny that shortcomings and problems in high school journalism exist as the commission discovered, but the future of high school journalism might have been better served with a more positive approach to the inquiry and the final report.

The report gave few specific, practical means of implementing the major recommendations. For instance, what does an administrator look for in a prospective journalism teacher? How much should an adviser be paid for the task? How do student editors proceed with administrators who prefer only the good news be printed?

The single most glaring omission in *Captive Voices* is adequate treatment in the body or appendix of the legal responsibilities of student journalists and their advisers. Much space is devoted to student rights; little to the accompanying responsibilities. No citizen in this country has absolute rights to freedom of speech and press. Yet *Captive Voices* fails to delineate the key restraints all journalists face. Libel is mentioned, but recent Supreme Court decisions make libel suits difficult for plaintiffs to recover.

Legal restraints of far more immediate danger of infringement by untrained advisers and over-zealous students bent on exercising their rights to the fullest are obscenity, invasion of privacy, and copyright infringement. The implications of these areas for high school journalists have been treated elsewhere in scholastic and professional journalism periodicals and texts, but *Captive Voices* ignores the entire question of student/adviser legal responsibility and focuses on access to student publications and censorship instead.

In civil suits such as those arising from students' misuse of the high school press, the liable party is an adult: the adviser, principal, other administrator, the student journalist's parents, or all of these. The minor student journalist is probably immune from prosecution. For this reason, few advisers are willing to allow students total publication freedom. The tendency is to play it safe, even if doing so means curtailing students' rights.

As the commission notes, most adviser/administrator violation of students' rights comes as a result of censoring or restraining provocative, controversial stories. If non-tenure teachers know their contracts will not be renewed if their publications are inflammatory, they will hardly be champions of students' rights.

Two recent cases illustrate the consequence of supporting student expression which offends administrators or the community. One, *Harrod and Buchanan* v. *St. Louis Board of Education* (500 S.W. 2d I), upheld a lower court's decision to permit the firing of the tenured teachers because they failed to properly supervise a student assembly program. In 1969 the program was racially inflammatory and obscene and caused such violence and property damage that the school was closed ten days. The next year the sponsors ignored the warnings of school officials about a repeat perfor-

mance and were suspended and later fired when the assembly progam was unsuitable again.

The Appeals Court held that "sponsors of student groups are responsible for assuring that activities of such groups are in harmony with the objectives of the school and the Board of Education." It also noted that "passive neglect as well as affirmative misfeasance may be sufficient to hold the adviser or sponsor responsible."

However, if a board's guidelines are unreasonable or if they are capriciously or arbitrarily enforced, the court may determine them invalid.

This case was decided in part because of the precedent of *Jergeson* v. *Board of Education of Sheridan County (Wyo.)*, (476 P. 2d 481). A nontenured teacher, Jergeson was fired because he did not exercise adequate control of the student newspaper he advised. The specific charge was incompetency because he "failed to teach in a manner satisfactory to the board and had not met or attempted to meet the minimum standards of conduct and propriety for a teacher in the school."

At question were articles from an April Fool edition of the newspaper which teachers and administrators found offensive. Jergeson argued unsuccessfully that his failure to prevent publication was not incompetency. A dissenting judge's opinion warned that the case would allow the dismissal of a teacher "who for flimsy reasons had incurred the ill will of the board."

These two cases would cause advisers—tenured or not—to reconsider the degree to which they protect or restrict students' First Amendment rights.

The solution at the local and national level may be to educate administrators to the value of journalism programs that foster responsible, accurate, thoughtful reporting and investigating of the student journalist's world.

Captive Voices had commendable goals, but the inquiry was hardly an objective one. Research techniques in the content analysis and surveys were less than adequate. Hearings were heavily weighted with witnesses who would provide statements supporting the "something smells in high school journalism" contention. And that indeed is the tone of the report. Readers who have little firsthand knowledge of successful, innovative, dynamic high school journalism programs get a one-sided version in *Captive Voices*.

The commission may have undertaken the "single largest national inquiry into high school journalism," but the result could do more damage than good if it further antagonizes thin-skinned administrators or inspires would-be advocacy student journalists to act irresponsibly and rashly in pursuit of their First Amendment rights. Once again the conscientious adviser/teacher must tread the line between supporting unpopular school policies and encouraging responsible journalistic efforts from students.

Captive Voices does not have all the answers, but some of its proposals deserve analysis and possible implementation by those concerned with the future of high school journalism.

—Linda S. Gregory

REVONDA J. BALL

THE LAW AND THE ENGLISH TEACHER

As teachers and students return to classrooms this fall many of the same questions that have haunted them in the past will again confront them: What authority do school boards have in determining curriculum? What responsibility and obligations for education rest with the community and parents? Just what may or may not be permitted as proper reading matter in English curriculum? Who determines reading lists and what is proper expression in areas of controversial subject matter? Where does one draw the line between mere slang and obscenity?

The answers are far from clear cut. Rulings by federal agencies and judicial decisions in courtrooms have to some degree established certain kinds of standards and boundaries, but more often the courts have been reluctant to rule upon cases where restrictions upon language would stagnate the freedom of inquiry. It will be the purpose of this paper, therefore, to outline areas of concern, of responsibility, for these three groups: teachers, parents, and students in the light of recent legal decisions in several particular cases.

We might first look at the rights of parents and the community and their responsibility for providing schooling policy.

Rights of Parents and Community

> The establishment and maintenance of the educational system through public schools is an indispensable obligation and function of the state, and the system should be so maintained as to keep abreast with progress generally and to meet the needs of the times.

This statement from the Iowa Supreme Court stresses the right of the community to expect education which meets current needs. The courts do not have the power to make prescriptions concerning the curriculum; they have only the authority to adjudicate the particular cases that are brought to them.[2] The courts will not interfere with actions of school officials unless it appears that the act of a school agency has been unconstitutional or illegal or that the action has amounted to an abuse of the power vested in the school authority.[3] However, Edward C. Bolmeier says that if a controversial issue is not resolved by school officials, it may go to the courts for settlement. "Therefore," he concludes, "what may or may not be taught is ultimately settled by the courts—and the higher the court, the more likely this true."[4]

The courts notwithstanding, public education is kept closer to the control of the people than other aspects of government are: for instance, in about nine out of ten school districts in the country the board of education is

directly elected by the voters. The public schools are operated in 49 of the 50 states by local boards of education with the Hawaiian statewide school district being the only exception.[5]

The local board of education has no inherent powers in connection with the control of the curriculum. The authority of the board in this connection is only such as authorized by the legislature. The local board, however, may make all reasonable rules and regulations necessary to the control and operation of the curriculum, subject only to the constitutional and statutory provisions of the state.[6] In addition, the local school board may dismiss a teacher cited by the principal for insubordination if the teacher refuses to comply with "reasonable requests of the principal made without malice or bad faith." The legal authority of the school principal extends over teachers in the classroom, to the extent that "both content and methods of instruction may be controlled."[7]

Within the limits and powers of the courts, local school boards, and school officials, there are channels through which parents and taxpayers may exercise some choice in the school curriculum. Reutter explains:

> Occasionally a parent or a taxpayer objects to some material used for instructional purposes in the schools. When local authorities permit the use, legal recourse may be had to the courts on allegation that the discretion of the local board of education has been abused or that constitutional rights are being infringed by the teaching. In most instances, the issue can be resolved by permitting the children of the aggrieved parent not to participate in the instruction which is offensive. In order for a court to require the removal of a publication completely from the curriculum, it would have to be shown that the volume actually did teach doctrines of a sectarian nature or doctrines subversive of the government, would grossly offend the morals of the community, or was intended to promote biogoted and intolerant hatred against a particular group.[8]

Similarly, Evelyn Fulbright says that parents or other interested individuals must show that their rights have been jeopardized before the courts will interfere in matters pertaining to selection of instructional materials for the public schools.[9]

However, professional organizations and educators have spoken of the rights of parents and citizens to "request and receive an explanation of the reasons for the choice of books in the required curriculum of the public schools or to request and receive a reconsideration of choices."[10] Even so, these individuals do not have the right to impose their views upon others because doing so would infringe upon the rights of others.[11]

Rights of Students

In *The Students' Right to Read* the National Council of Teachers of English makes the statement that censorship of books can leave students with an "inadequate grasp of the values and ideals of their culture."[12] The NCTE continues:

> What the teacher sees as his responsibility, however, is to lead his students to understand all aspects of their culture and society—the good and the bad. This he can best

> do by cultivating in his students an appreciation for the wise and enduring thoughts of great writers. This he cannot do if major literary documents interpreting our culture are cut off from his students.[13]

Bud Church says that at one time English was "the most boring subject a student had to endure" because the books were "disgustingly safe," and even the greatest works were often expurgated. However, teachers are not so timid in challenging students today and, "consequently, today's parents are increasingly uncomfortable." Church stresses that although he does not blame parents and teachers who fear this trend, "they must not deny young people access to books that raise perplexing human questions, nor prevent guidance in how to read such books."[14]

The role of the teacher as censor has been discussed by critics including Morris Ernst who says that the whole course of education of a child can be changed by the books he is permitted to read and by "the effect that private pressure groups have upon the mind and attitudes" of the child's teacher.[15] As a student speaking for student rights, Lynda Billings complains that not only are students restricted in reading controversial materials, but they are also often afraid to use controversial subjects in their own compositions. She adds that by narrowing the student's subject choice, and suggesting which topics are not socially acceptable, "the teacher imposes his method of censorship and his ideals on the student."[16]

"The right to read, like all rights embedded in our constitutional traditions, can be used wisely or foolishly."[17] However, the NCTE feels that it is essential for the educated man to possess the power of discrimination and to be entrusted "with the determination of his own actions."[18]

Rights of the English Teacher

When cases involving freedom of high school English teachers to teach controversial materials have reached the courts, the First Amendment rights to academic freedom and the Fourteenth Amendment concepts of "due process" and "equal protection" have been involved.[19] In the findings of two recent cases, the court has concluded that the dismissal constituted an unwarranted invasion of the First Amendment right to academic freedom and ordered both teachers reinstated.[20]

That two such cases have been in the courts recently is indicative of the seriousness of the question. For the most part, teachers involved in censorship disputes change the reading assignments or quietly fade from the school, hoping to get a new position with a more understanding administration. In such cases, the trend has been that when one teacher leaves, others tend to become more conservative, and when one book is the center of controversy in one area, it quietly disappears from other areas. Warren Gauerke challenges teachers to take the question seriously and to "burden the courts with cases with the view to getting them to restrict the wide area of discretion of school boards" so that personal rights of teachers could be made real.[21]

"The Wisconsin Council of Teachers of English Policy Statement on Censorship" speaks of the rights of the professional teaching staff to select books for classes and for individual reading and to discuss books with students. The statement stresses that these rights are necessary to the adequate fulfillment of the staff's professional responsibility "to guide students toward the knowledge and understanding befitting free and reasoning persons."[22]

Garber and Edwards point out that some courts have held that a school board has authority to dismiss a teacher "at pleasure where it has reserved the right in its rules or regulations, or where this right has been so provided in the contract itself." However, other courts hold that a board of education has no such authority.[23] Garber and Edwards further explain:

> When teachers enter into contracts they agree by implication, to obey all reasonable rules and regulations of the board of education. They may, therefore, be dismissed for insubordination for failure to obey any reasonable rule.[24]

If the statutes provide that a teacher may be dismissed for cause only, he is entitled to notice of the charges against him and to an opportunity to appear in his own defense. The teacher is entitled to a "fair and unbiased hearing." If this has not been granted him, dismissal of the teacher will be set aside by the court.[25]

> A teacher who has been illegally dismissed may sue the school district for breach of contract, but he cannot recover from the members of the school board unless they have acted maliciously or in bad faith, so it is generally held.[26]

It is interesting to contrast the views of two men with experience as school superintendents, regarding academic freedom of the English teacher. Chester Nolte, who has served as a public school superintendent for ten years states that academic freedom "is not a constitutional right among teachers, but rather depends upon the contract."[27] Nolte explains:

> Should the teacher embarrass the board, speak outside his area of competency, or act in an irresponsible manner, he may be legally dismissed despite the First Amendment.
> All this reveals that the teacher's rights, like everyone else's are not unlimited. Most teachers feel it is no great imposition to be required to lead exemplary lives, and do so willingly as a part of their professional responsibilities.[28]

On the other hand, Sayre Uhler, a New England superintendent, says that the role and function of the teacher cannot be "restricted, impaired, or restrained in any way by prior normative prohibitions, based on moral and social values of any individual or group." Uhler includes even those values held by the majority and stresses the function of the superintendent in guaranteeing that such norms will never "enter into the teaching-learning processes and affect decisions about what the teacher will teach or not teach."[29] He concludes:

> Any violation of the teacher's right to decide what to teach is suppression in its most evil form because censorship is suppression of the only safeguard of the public liberty—the free, public schools.[30]

However, the fact remains that censorship is a problem today and the most concrete evidence of it is to be found in the cases of the court.

Summary of Relevant Legal Cases

One area of legal concern is the use of Biblical literature and religious tradition in the public school classroom. In a 1962 case,[31] Mr. Justice Brennan spoke of the importance of the Bible to the humanities. He said that the effect on the curriculum of religious materials should be largely in the hands of officials in the schools and not the courts.[32] Since the 1963 *Abington* v. *Schempp*[33] decision, much of the controversy is removed. Today, it is constitutionally permissible to study the Bible for literary and historic qualities.[34] James S. Ackerman speaks of the "undeniable ground swell of student interest in the study of the Bible and religious traditions." Ackerman, who has been directing summer institutes that train high school English teachers in developing units on the Bible as literature, explains his belief that the teacher should approach the Bible as he would any other work of significance to fulfill Mr. Justice Clark's dictum that the work be "presented objectively."[35]

Ackerman advises the teacher to ask the same questions of a Biblical passage as he would ask about other types of literature, and to interpret without any particular faith commitment.

Racial stereotypes constitute another controversial area in the reading question. Although pressure groups have altered their policies toward questionable books, there have been occasional problems in the past few years. Donelson has cited a Georgia case involving *A Patch of Blue*, a novel about a budding romance between a white girl and a Negro man.[36] Two of the case studies in the National Council of Teachers of English pamphlet, *Meeting Censorship in the Schools*, are concerned with the novel *To Kill a Mockingbird* in which a black man is accused of raping a white girl. However, neither of the teachers in the case studies was dismissed and the controversies were settled without legal suit.[37]

In addition, two well-known utopian novels, *Brave New World* and *1984* have been involved in dismissal cases. In *Parker* v. *Board of Education of Prince George's County, Maryland*,[38] the plaintiff, Ray Elbert Parker, was a probationary high school psychology teacher dismissed in 1963 for assigning *Brave New World* to his high school students. A Maryland statute empowered the board to dismiss a probationary teacher without giving cause or hearing. The contract reiterated this stipulation, but provided for a 30-day notice during June or July. Dismissal was upheld on the ground that no hearing was required.[39] "The decision rested entirely on the written contract and the court did not go into the constitutional question."[40]

The case is important to English teachers because of the question it raises. The plaintiff brought suit challenging his dismissal from employment for assigning the book to his class as an infringement of his First Amendment right to free speech. The court refused to grant judicial relief. The *Harvard Law Review* defends the court's action:

> In the first place, the free speech clause of the First Amendment, though a logical textual source of a constitutional right of academic freedom, is of questionable relevance to speech in public elementary or secondary classrooms. The assumptions of the "free marketplace of ideas" on which freedom of speech rests do not apply to schoolaged children, especially in the classroom where the word of the teacher may carry great authority. Furthermore, since one function of elementary and even secondary education is indoctrinative—to transmit to succeeding generations the body of knowledge and set of values shared by members of the community—some measure of public regulation of classroom speech is inherent in the very provision of public education.[41]

However, the court in the *Keefe* v. *Geanakos*[42] case expressed unhappiness with the *Parker* court. The *Keefe* court points out that the general chilling effect of permitting such rigorous censorship is even more serious than the possibility that unregulated classroom speech "demeans any proper concept of education."[43]

The *Parker* court stressed that the teacher, in making reading assignments, should know both the book and the student:

> You must consider the maturity of the student as well as the mores of your school community before assigning material to be read. If you have not read the book, do not assign it to your students.[44]

The difficulty of finding new employment after dismissal was brought out by the plaintiff in the *Parker* case. Although the court considered this problem, it upheld the board's actions. The court concluded that the plaintiff may find it difficult to obtain employment in certain schools, but this would not prevent his "practicing his profession." "In either event," the court emphasized, "the Board was acting within its right and its responsibilities in following the recommendations of its staff."[45]

The *Parker* case has an historic significance for English teachers also. Bolmeier points out that the case is the first of the few cases in which the teacher's right to teach alleged obscene literature has been challenged.[46] Since 1965, several more cases have been heard regarding both reading and discussing matters related to sex and sexual behavior. The legal position of such cases had been determined in part by the circumstances of the use of the controversial material.

The 1971 case of *Mailloux* v. *Kiley*[47] involved an eleventh grade English teacher who assigned a few chapters from the novel *A Thread That Runs So True*. A passage from the book led to a class discussion on the foibles of our puritan heritage. In the discussion, the teacher decided to talk about the puritanical aspects of contemporary society. He first wrote the letters "GOO" on the board and received no reaction from students. Then he wrote

"the popular four-letter word for coitus," and again asked for definitions. After a boy defined it as "sexual intercourse," the teacher contrasted the "taboo" qualities of the four-letter word with the social acceptability of the definition. A brief discussion followed, and the class ended.[48]

The next day, the parents of a girl complained, and the board dismissed the teacher for unbecoming conduct. Subsequently, the teacher sued for reinstatement and back wages. The plaintiff's case rested on three points:

> (1) testimony of college professors that discussion of the four-letter word was appropriate in an eleventh grade English class and served a serious educational purpose;
> (2) the word itself appears in books in the school library;
> (3) the school had not covered this conduct by a specific regulation.[49]

The court upheld the plaintiff because he was put on notice without a regulation. The school district appealed the decision, but the appeal was "dismissal without prejudice,"[50] and the district court was instructed to proceed promptly with a "trial on the merits." It was a condition of the injunction that the plaintiff not engage in similar conduct in the meantime.[51]

The Court of Appeals emphasized its reluctance to superimpose its judgment on school authorities. The court sees possible differences between an English teacher discussing the content and meaning of a serious piece of writing, and engaging in discussion of social mores in the use of language with a writing of a socially taboo word on the blackboard. The court adds:

> We cannot presently pass upon the district court's assumption that every adolescent girl knows the word in question, or the complementary one that she needs to know, or to have the word used in class. We do know that the fact that there was no regulation proscribing the use of particular language does not alone compel a conclusion that due process was violated. Finally, we see that the court does not intend to referee every debatable dispute between school teachers and their employers simply because academic freedom may arguably be involved. We will not superimpose our judgment on the school authorities unless, in a constitutional area, we consider their decision plainly wrong.[52]

This statement of the court's refusal to become a referee in school debates is quoted in the *Pierce* v. *School Committee of New Bedford* case in which a student was expelled for mistreating the flag and for distributing literature which labeled a school committee member "a fascist pig."[53]

In its discussion, the Court of Appeals says that it "no way regrets its decision in *Keefe* v. *Geanakos,*" but it did not intend thereby to do away with the proprieties, or to give approval in the name of academic freedom to conduct which can reasonably be deemed "both offensive and unnecessary to the accomplishment of educational objectives."[54] This observation of the court was also used in the case of *Rember* v. *Board of School Trustees for Lexington County, District No. 1.*, which involved student dress requirements.[55]

The case of *Keefe* v. *Geanakos*[56] concerns action by a tenured high school teacher as a result of suspension for classroom use of a vulgar term for an incestuous son. The controversy arose because of an *Atlantic*

Monthly (student edition) article that the teacher had assigned to his senior English class.[57] The article contained a vulgar word, which the teacher explained, along with the reasons for its usage by the author. He also gave the possibility of an alternate assignment if a student wished one. The following evening, he was asked to appear before the school committee and defend his use of the word. He said that he could not "in good conscience" agree not to use the offending word again in his classroom. He was then suspended for disciplinary reasons, and it was proposed that he be discharged.[58]

The court read the magazine article, "The Young and the Old," by psychiatrist, Robert J. Lifton, in its entirety and found it a valuable discussion of protest and revolt. The court explained:

> It is in no sense pornographic. We need no supporting affidavits to find it scholarly, thoughtful and thought-provoking. The single offending word, although repeated a number of times, is not artificially introduced, but, on the contrary, is important to the development of the thesis and the conclusions of the author. Indeed, we find it difficult to disagree with plaintiff's assertion that no proper study of the article could avoid consideration of this word. It is not possible to read the article, either in whole or in part, as an incitement to libidinous conduct, or even thoughts. If it raised the concept of incest, it was not to suggest it, but to condemn it; the word was used, by the persons described, as a superlative of opprobrium. We believe not only that the article negatived any other concept, but that an understanding of it would reject, rather than suggest, the word's use.[59]

Regarding the word in question, it was pointed out in the case that it was used by young radicals and protesters from coast to coast and could be found in no less than five books in the school library. The court found it hard to believe that a student could receive a book in the library, "but that the teacher could not subject the contents to serious discussion in class." However, the court was hesitant to place its decision on this ground alone "lest doing so would lead to a bowdlerization of the school library."[60] Therefore, the court found the major question of the case to be "whether a teacher may, for demonstrated educational purposes, quote a 'dirty' word currently used in order to give a special offense, or whether the shock is too great for high school students to stand."[61]

The court does not question the defendant's belief that some parents have been offended; however, the court fears for the future of students who must be protected from such exposure. The court added, "With the greatest respect to such parents, their sensibilities are not the full measure of what is proper education." The Court of Appeals felt that academic freedom is not preserved by "compulsory retirement, even at full pay." Finally, the court believed that the plaintiff would prevail on the issue of law and reversed and remanded the order of the District Court denying an interlocutory injunction pending a decision on the merits of the case.[62]

In "Academic Teaching Freedom" Phillip A. Mason says:

> In class speech is protected so long as it is not disruptive, so long as it does not interfere with the state's interest in promoting the efficiency of public education and so long as it is reasonably related to a legitimate educational purpose. This latter re-

> quirement, derived from the *Keefe* case, takes into account the variability of the standard in different classroom settings.[63]

Mason also speaks of the importance of the age of the students in determining if the language used is obscene, with the greater influence on the younger students. However, he says, "The limitations of a classroom speech cannot be determined by parent or community opinion, or by any reason unrelated to valid educational purposes."[64]

Sidney Hook speaks of the offensive word in the *Keefe* case as a powerful disruptive element. He says that "when a student 'dresses down' the Dean of Columbia College before the assembled student body as a 'motherfucker,' he doesn't intend anything personal, of course." Hook points out that this is only a way of emphasizing a grievance, but this attempt to explain the obscenity away, "simply ignores the social effect." He explains:

> So successful was its use by the SDS at Columbia in demoralizing meetings with faculty members and administrators that it became one of the chief means of physically disrupting the sessions of the disciplinary tribunal set up to consider the case of a law student charged with assault and battery against university personnel, and physically hindering access to a new faculty member and to other students.[65]

Hook says that the student got off "scot-free" and was permitted to continue his law course without interruption. He was simply warned not to repeat the offense.[66]

In the *Keefe* case, five books in the school library containing the questionable word were cited. In a recent issue of *The English Journal*, Janet R. Sutherland presents a defense of using Ken Kesey's *One Flew Over the Cuckoo's Nest* in the high school English classroom.[67] In one line in the novel, Kesey's tragic hero, McMurphy brings up three controversial areas of the censorship question: religious, moral, and racial:

McMurphy raised his voice, "Goddamned motherfucking nigger!"[68] Sutherland tells the English teacher that the book is not obscene, racist, or immoral, although it does contain language and scenes which by common taste would be so considered. She argues, "Like all great literature, the book attempts to give an accurate picture of some part of the human condition, which is less than perfect."[69]

The requirement from the *Keefe* case that classroom speech be reasonably related to a legitimate educational purpose is important in the cases of other public school teachers. In his study, Hook defines academic freedom as:

> The right of a professionally qualified person to inquire, discover, publish, and teach the truth as he sees it in the field of his competence. But sometimes, for a variety of reasons, teachers will disregard their obligation to teach their subjects, and will consume class time in holding forth on matters utterly unrelated to the subject matter.[70]

When a teacher in Wyoming was dismissed because his philosophy and practice of education were adjudged to be detrimental to high school students, the charges against him included his (1) failure to censor the school newspaper, (2) alleged permitting of a "dirty" poem on the blackboard for two weeks, (3) alleged use of the term "rape" before a group of high school girls, and (4) personal beliefs.[71] It was brought out in the arguments that the *Keefe* case contained a much more shocking word than "rape". The court affirmed the decision and ruled that dismissal was a violation of his rights of due process of law and of freedom of speech and expression. The court criticized the fact that there were no minimum performance standards of what the board expected from teachers.[72]

Bolmeier explains that "courts are less likely to approve improper attitudes and treatment of sex matters in the classroom than elsewhere."[73] He cites the case of *Pyle* v. *Washington County School Board*[74] as an example. In the *Pyle* case the court denied a petition for a writ of certiorari for a school band director suspended because of lack of discipline and remarks on sex and virginity and premarital sex relations. In its disapproval the court said:

> We are still of the opinion that instructors in our schools should not be permitted to risquely discuss sex problems in our teenage mixed classes so as to cause embarrassment to the children or to invoke in them other feelings not incident to the courses of study being pursued.[75]

The case of *Parducci* v. *Rutland*[76] in 1970 offers interpretations of some important questions in the censorship controversy. The action was brought by Marilyn Parducci, a first year teacher, against public school officials for damages and injunctive relief claiming that her constitutional rights to academic freedom and due process of the law had been violated. Judgment was for the plaintiff since the school officials failed to show either that the assignment of the particular short story for reading by juniors in the high school English class was inappropriate for their reading or that it created a disruption to the education process in the school.[77]

An honors graduate from Troy State University, the plaintiff had been assigned to teach English and Spanish in Montgomery, Alabama, for the 1969-1970 school year. On April 21, 1970, she assigned to her English classes a story, "Welcome to the Monkey House," a comic satire by Kurt Vonnegut, Jr., prominent contemporary writer. The next day the plaintiff was called to the principal's office for a conference with the principal and the associate superintendent of the school system.

Both men expressed their displeasure with the context of the story, which they described as "literary garbage," and with the "philosophy" of the story, which they felt condoned, if not encouraged, "the killing of elderly people and free sex." Each of them later testified that they had no special expertise in literature nor had either one ever taught an English course.[78] The officials were also concerned that three of the plaintiff's students had asked to be excused from the assignment and that several parents had called the school to complain. They, therefore, admonished the teacher not

to teach the story if she wanted to keep her job. The reaction of the plaintiff to this is similar to that of some other teachers threatened with dismissal in reading controversies.[79] She became "very emotionally upset" and, subsequently, tendered her resignation.[80]

Although the plaintiff's motion for a temporary restraining order was later denied, the defendants agreed to allow the teacher to withdraw her resignation and to grant her a hearing before the Montgomery County Board of Education on the question of dismissal. Since she was a probationary teacher, she was not entitled to a hearing under state law. The school board hearing was held the following day. On May 6, the school board notified the plaintiff that she had been dismissed for assigning materials "which had a disruptive effect on the school" and for "refusing the counselling and advice of the school principal."[81]

The plaintiff was also advised that insubordination was one of the bases for her dismissal by reason of a statement she made to the principal and the associate superintendent that "regardless of their counselling" she would continue to teach the eleventh grade English class at the Jeff Davis High School by the use of "whatever material she wanted and in whatever manner she thought best." The plaintiff then renewed her motion for a preliminary injunction in which she sought her reinstatement as a teacher. It was made clear that her teaching ability was not in issue since the principal had conceded that she was a good teacher and would have received a good recommendation from him but for this one incident.[82]

The arguments of the case pinpoint several issues of importance in the teaching of high school English. One issue involves the issue of academic freedom. The court said:

> Although academic freedom is not one of the enumerated rights of the First Amendment, the Supreme Court has on numerous occasions emphasized that the right to teach, to inquire, to evaluate and to study is fundamental to a democratic society.

The court states from the *Weiman* v. *Updegraff* case,[83] "The classroom is peculiarly the marketplace of ideas," and continues, explaining that the right of academic freedom should be brought into play, especially because "any unwarranted invasion of this right will tend to have a chilling effect on the exercise of the right by other teachers." However, this right, like other constitutional rights, is not absolute and must be balanced against the competing interest of society. The court cited the statement from *Shelton* v. *Tucker:*

> A teacher works in a sensitive area in a schoolroom. There he shapes the attitudes of young minds toward the society in which they live. In this, the state has a vital concern.[84]

Therefore, the primary question was whether the story "Welcome to the Monkey House" was inappropriate reading for high school juniors because of its language and ideas. The court found nothing in the story that would make it obscene by the legal obscenity standards set up in earlier cases. A part of the court's explanation brought up again the question of classic and modern literature.

> The slang words are contained in two short rhymes which are less ribald than those found in many of Shakespeare's plays. The reference in the story to an act of sexual intercourse is no more descriptive than the rape scene in Pope's "Rape of the Lock."[85]

In addition, the court found that the plaintiff's conduct was not such that "would materially and substantially interfere with reasonable discipline requirements in the school."[86] Also, the court cited the finding in *Keefe* that the sensibilities of the complaining parents "are not the full measure of what is proper education."[87]

Another point brought out in the case was that the plaintiff's school had no announced policy governing the selection of outside reading materials, and such selection was left up to the "good taste and good judgment of the individual teacher." The court was concerned with the "total absence of standards," and stressed the feeling that when the teacher is forced to speculate as to permissible conduct, he is apt to become "overly cautious and reserved" in the classroom. Such a reluctance to investigate and experiment with new and different ideas "is anathema to the entire concept of academic freedom."[88]

This court, as others had before, expressed its reluctance to interfere in the discretion of school officials to administer their own schools; however, the court contended that this discretion cannot be exercised so as to deprive teachers of their First Amendment rights. The court found the inconsistency of the school officials to be unfair when it considered that the English department lists of recommended works for juniors included J.D. Salinger's *Catcher in the Rye*. "This novel, undisputedly a classic in American literature, contains far more offensive and descriptive language than that found in the plaintiff's assigned story." The court also mentioned *1984* and *Brave New World* from the senior lists in addition to a number of controversial books in the school library. In the end, the court ordered the reinstatement of the plaintiff and the removal from the records of all references relating to her dismissal.[89]

Considering the privileges of and limits on the rights of different groups and the conclusions drawn in recent legal action in the reading controversy, it is necessary for the competent high school English teacher to be informed on this question. It is helpful for him to be aware of the suggestions from professional organizations and from individuals on ways to avoid dismissal in reading controversies. The question is far from being settled as the 1974 incidents in Charleston, West Virginia, and Wilmington, North Carolina, indicate. Glenn Keever, speaking of the Wilmington controversy, reminds us that neither our courts nor our legislative bodies have had much success arriving at a decision of what is good taste.[90] The Washington Post headline "W. Virginia Schoolbook Protest Apparently Got Out of Hand"[91] echoes the sentiments of many concerned citizens; however, 2,000 textbook protesters made national headlines with their demonstrations in Charleston.[92]

Judge Frederick vanPelt Bryan, who 16 years ago ruled that *Lady Chatterly's Lover* was not obscene said recently,

> Much of what is now accepted would have shocked the community to the core a generation ago. Today such things are generally tolerated whether we approve or not.[23]

Therefore, in conclusion, the responsible English teacher must keep informed on the latest developments and authoritative views of the question of controversial reading materials in the school.

FOOTNOTES

[1] *Talbott* v. *Independent School District of Des Moines*, 299 N.W. 556 (1941).

[2] Evelyn Rebecca Fulbright, "Judicial Decisions Relating to the Curriculum of the Public Schools," (Unpublished Ed. D. dissertation, Duke University, 1963), p. iv.

[3] *Ibid.*, p.v.

[4] Edward C. Bolmeier, *Teachers' Legal Rights, Restraints, and Liabilities* (Cincinnati, 1971), p. 55.

[5] E. Edmund Reutter, Jr., *Schools and the Law* (Dobbs Ferry, N.Y., 1970), p. 21.

[6] Fulbright, p.v.

[7] Warren Gauerke, *Legal and Ethical Responsibility of School Personnel* (Englewood Cliffs, N. J., 1959), p. 127.

[8] Reutter, p. 44.

[9] Fulbright, p. 182.

[10] "The Wisconsin Council of Teachers of English Policy Statement on Censorship," *The Arizona English Bulletin*, XI, (February, 1969), p. 11.

[11] The National Council of Teachers of English, *The Students' Right to Read* (Champaign, Ill., 1962), p. 8.

[12] *The Students' Right to Read*, op. cit., p. 9.

[13] *Ibid.*, p. 10.

[14] Bud Church, "The Right to Be a Reader," *The Leaflet*, LXVIII (May, 1969), p. 39.

[15] Ernst and Swartz, *op. cit.*, p. 234.

[16] Lynda Billings, "Censorship: A School Problem," *The Leaflet*, LXVIII (May, 1969), p. 32.

[17] *The Students' Right to Read*, p. 8.

[18] *Ibid.*

[19] Reutter, p. 11.

[20] National Education Association Research Division, *The Teacher's Day in Court: Review of 1970* (Washington, D. C., 1971), p. 6.

[21] Gauerke, p. 127.

[22] "The Wisconsin Council of Teachers of English Policy Statement on Censorship," p. 11.

[23] Lee O. Garber and Newton Edwards, *The Law Governing Teaching Personnel* (Danville, Ill., 1969), p. 7.

[24] *Ibid.*

[25] *Ibid.*, p. 8.

[26] *Ibid.*, p. 9.

[27]M. Chester Nolte, *Guide to School Law* (West Nyack, N. Y., 1969), p. 68.

[28]*Ibid.*

[29]Sayre Uhler, "Public School Superintendents and the Question of Censorship," *The Leaflet*, LXVIII (May, 1969), pp. 16-17.

[30]*Ibid.*, p. 19.

[31]*Engle* v. *Vitale*, 370 U. S. 421 (1962).

[32]*Ibid.*

[33]*School District of Abington Township* v. *Schempp*, 374 U.S. 203, 83 S. Ct. 1960.

[34]Bruce Hartung, "To Pray or Not to Pray," *North Carolina Education*, II (April, 1972), p. 21.

[35]James S. Ackerman, "Religion in the Public Schools, *PTA Magazine*, XV (May, 1971), p. 3.

[36]Kenneth L. Donelson, "Shop Talk," *The Arizona English Bulletin*, XI (February, 1969), p. 56.

[37]National Council of Teachers of English, *Meeting Censorship in the Schools* (Champaign, Ill., 1967), pp. 13-22.

[38]*Parker* v. *Board of Education of Prince George's County, Maryland*, 237 F. Supp. 222 (February, 1969), p. 56.

[39]Harold H. Punke, *The Teacher and the Courts* (Danville, Ill., 1971), p. 644.

[40]Haskell C. Friedman, "The Legal Rights of Untenured Teachers," *Nolpe Law Journal*, I (1970), p. 102.

[41]"Developments in the Law—Academic Freedom," *Harvard Law Review*, LVIII, p. 1053.

[42]*Keefe* v. *Geanakos*, p. 360.

[43]*Keefe* v. *Geanakos*, p. 362.

[44]*Parker* v. *Board of Education of Prince George's County, op. cit.*, p. 225.

[45]*Ibid.*, p. 228.

[46]Bolmeier, pp. 69-70.

[47]*Mailloux* v. *Kiley*, 436 F. (2d) 565 (Ist cir. 1971).

[48]Lawrence W. Knowles, "Can a Teacher's Vocabulary Include Four-letter Words?" *Nation's Schools*, LIX (July, 1972), p. 39.

[49]*Ibid.*

[50]Mailloux v. *Kiley*, p. 566.

[51]*Ibid.*

[52]*Ibid.*

[53]*Pierce* v. *School Committee of New Bedford*, 322 F. Supp. 957 (1971).

[54]*Mailloux* v. *Kiley*, op. cit., p. 566.

[55]*Rember* v. *Board of School Trustees for Lexington County, District No. 1*, 327 F. Supp. 729 (1971).

[56]*Keefe* v. *Geanakos*, p. 362.

[57]*The Teacher's Day in Court—Review of 1970*, p. 29.

[58]*Ibid.*

[59]*Keefe* v. *Geanakos*, pp. 360-361.

[60]*Ibid.*, pp. 362-363.

[61]*Ibid.*, p. 361.

[62]*Ibid.*, pp. 361-363.

[63]Philip A. Mason, "Academic Teaching Freedom," *Nolpe School Law Journal*, I (Fall, 1970), p. 9.

[64]*Ibid.*

[65]Sidney Hook, *Academic Freedom and Academic Anarchy* (New York, 1970), pp. 86-87.

[66]*Ibid.*, p. 87.

[45]Janet R. Sutherland, "A Defense of Ken Kesey's *One Flew Over the Cuckoo's Nest*," *The English Journal*, LXI (January, 1972), p. 28.
[46]Ken Kesey, *One Flew Over the Cuckoo's Nest* (New York, 1962), p. 261.
[47]Sutherland, p. 28.
[48]Hook, p. 37.
[49]*Jergeson* v. *Board of Trustees of School District No. 7*, 476 P. (2d) 481 (Wyo.) (1970).
[50]*Ibid.*, p. 490.
[51]*Bolmeier*, p. 69.
[52]*Pyle* v. *Washington County School Board*, 238 So. (2d) 121 (Fla., 1970).
[53]*Ibid.*, p. 123.
[54]*Parducci* v. *Rutland*, 316 F. Supp. 352 (1970).
[55]*Ibid.*
[56]*Ibid.*, pp. 353-354.
[57]See also Case Study VII in *Meeting Censorship in the Schools*, pp. 29-32.
[58]*Parducci* v. *Rutland*, p. 354.
[59]*Ibid.*
[60]*Ibid.*
[61]*Weiman* v. *Updegraff*, 344 U.S. 183, 73 S. Ct. 215, 97 L. Ed. 216 (1952).
[62]*Shelton* v. *Tucker*, 364 U. S. 479, 81 S. Ct. 247, 250, 5 L. Ed. (2d) 231 (1960).
[63]*Parducci* v. *Rutland*, p. 356.
[64]*Ibid.*
[65]*Keefe* v. *Geanakos*, pp. 361-362.
[66]*Parducci* v. *Rutland*, p. 355.
[67]*Ibid.*, p. 356.
[68]Glenn Keever, "The School Censors," *North Carolina Education*, V (Nov., 1974) p. 32.
[69]*Washington Post*, Sept. 15, 1974, p. A4.
[70]*Ibid.*, Nov. 10, 1974, p. A9 and Dec. 1, 1974, p. D13.
[71]*Ibid.*, April 6, 1975, p. K2.

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